

GAO

Report to the Chairman, Subcommittee
on Insular and International Affairs,
Committee on Interior and Insular
Affairs, House of Representatives

December 1989

U.S. CUSTOMS
SERVICE

Unresolved Audit
Issues Between
Customs and the
Virgin Islands



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The Honorable Ron de Lugo
Chairman, Subcommittee on Insular
and International Affairs
Committee on Interior and Insular
Affairs
House of Representatives

Dear Mr. Chairman:

This report responds to the Subcommittee's concern about certain issues in dispute between the U.S. Customs Service and an auditor employed by the Virgin Islands. In October 1985, the Virgin Islands legislature passed legislation authorizing an audit of the money collected by Customs for the Virgin Islands. In June 1987, the auditor hired by the Virgin Islands Governor presented Customs a draft of his findings and recommendations. The Virgin Islands' government and Customs did not agree on all issues. The Subcommittee requested us to render an opinion on some of the issues in dispute.

Audit Issues Reviewed

The unresolved issues we were asked to review can be categorized as legal, accounting, and other. The three legal issues concern whether (1) the recipient of preclearance collections¹ should be the United States or the Virgin Islands, (2) the Virgin Islands should receive interest on its funds kept in an account maintained by the U.S. Treasury, and (3) the Virgin Islands has a right to U.S. duties collected on goods that enter the United States before they are shipped to the Virgin Islands.

The accounting issue involves a contested \$5 million that the Virgin Islands auditor claims Customs collected but has not credited to the Virgin Islands account.

The Subcommittee also requested us to provide information on (1) the amount charged to the Customs user fee account to pay for certain costs of collecting duties in the Virgin Islands,² (2) the calculation and allocation of Customs' administrative support costs for collecting the Virgin

¹Preclearance collections are U.S. duty collections made in the Virgin Islands from people returning to the United States. When these passengers arrive in the United States they do not have to go through Customs because they have been precleared.

²The Customs user fee account is funded by a fee placed on the value of imported merchandise and on various services provided by Customs. Certain duty collection costs, such as inspectional overtime, are eligible to be paid from the account.

Islands' import duties, and (3) the recovery of erroneous payments made to former Customs employees who had worked in the Virgin Islands.

Results in Brief

Regarding the legal issues, we concluded that

- the United States is the rightful recipient of preclearance duty collections,
- the Virgin Islands is not entitled to interest on Virgin Islands funds kept in an account maintained by the U.S. Treasury, and
- the Virgin Islands is not entitled to any portion of U.S. customs duties collected in the United States when the cargo on which the duty is based is ultimately shipped to the Islands.

A detailed discussion of the legal issues, including the rationale for our opinions, is in appendix I.

Regarding the contested \$5 million, because of insufficient Customs records, we were unable to reconstruct the financial history of Customs' collections and disbursements that we needed to decide whether the Virgin Islands is owed the money in question. Neither the auditor nor Customs has sufficient documentation to fully support their respective positions. (See app. II.) Thus, we were unable to resolve this dispute.

As for the user fee account funds and administrative support costs issues, the Customs Deputy Commissioner informed the Virgin Islands Governor in a May 1989 letter that about \$830,000 was charged to the user fee account to pay for certain Customs costs in the Virgin Islands. This amount covered the period from August 1987 through March 1989. Additionally, Customs charged the Virgin Islands account about \$93,000 for expenses that should have been charged to the user fee account. Customs corrected this error and refunded the money to the Virgin Islands in October 1989. The May 1989 letter also notes that a forthcoming Customs directive on the Virgin Islands operations is to include information on how Customs will estimate and allocate administrative support costs. Customs expects to issue the directive in December 1989. As for the payments Customs erroneously made to two individuals after they separated from Customs, the payments have been recovered. (See app. III.)

Background

Goods imported into the Virgin Islands are subject to a Virgin Islands duty. Customs is required under 48 U.S.C. 1395 to assist the Virgin Islands in collecting these duties. The Revised Organic Act of the Virgin Islands, enacted in 1954 and revised through the years, provides for Customs to subtract its costs of collecting the duties from the amount of duties to be deposited with the Virgin Islands.

According to Customs, in fiscal year 1988, Customs collected about \$9 million for the Virgin Islands at a cost of about \$3.5 million. This included Customs' administrative support costs, such as personnel compensation, travel, transportation, rent, communications, supplies, materials, and equipment.

The Virgin Islands auditor began his review in October 1986. In the draft report he submitted to Customs in June 1987, the auditor presented a number of findings and recommendations. In an April 1988 letter, the Commissioner of Customs informed the Virgin Islands Governor of Customs' position and of actions taken or to be taken on the significant issues. In September 1989, the auditor issued a final report.

Objectives, Scope, and Methodology

The objectives of our review were to determine (1) whether the recipient of preclearance collections should be the United States or the Virgin Islands, (2) whether the Virgin Islands should receive interest on its funds kept in an account maintained by the U.S. Treasury, (3) whether the Virgin Islands has a right to U.S. duties collected on goods entering the United States before being exported to the Islands, and (4) whether the Virgin Islands is owed the contested \$5 million. For the remaining issues, our objectives were to get information on (1) the amount of collection costs charged to the Customs user fee account, (2) the methodology Customs uses to calculate and allocate its costs of collecting the Virgin Islands' import duty, and (3) the recovery of erroneous payments made to two former Customs employees who had worked in the Virgin Islands.

To collect information on these issues, we held interviews with various Customs officials in the Office of the Comptroller, the Office of Data Systems, the Office of Regulations and Rulings, and the National Finance Center and with the Virgin Islands auditor. We obtained and reviewed various documents and correspondence that dealt with these issues. For our legal analyses we researched and reviewed relevant statutes.

To resolve the issue of the contested \$5 million, we reviewed the Virgin Islands auditor's work papers that reconstructed Customs' collections and disbursements of duty to the Islands. We also reviewed Treasury's Combined Statement of Receipts, Expenditures and Balances of the United States Government for fiscal years 1977 through 1986.³ Using this statement, we compared the year-end Virgin Islands account balance data as reported by Customs to Treasury with the data calculated by the Virgin Islands auditor. We requested and analyzed detailed collection and disbursement data from Customs to determine the amount of collections that should have been credited to the Islands.

We did our audit work from January to August 1989 using generally accepted government auditing standards.

We discussed the results of our work with Customs officials in the Office of the Comptroller. They suggested some technical clarifications, and, where appropriate, we made them to the report. We also discussed our findings with the auditor employed by the Virgin Islands. Where he has taken a position different from ours, we have noted his reasons and our evaluation of them.

As arranged with the Subcommittee, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days after the report date. At that time, we will send copies to interested parties and make copies available to others upon request.

Major contributors to this report are listed in appendix IV. If there are any questions on the report, please call me on 275-8389.

Sincerely yours,



Lowell Dodge
Director, Administration
of Justice Issues

³In fiscal year 1984, the name of this report changed to the United States Government Annual Report Appendix.

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Abbreviations

MOU Memorandum of Understanding

Legal Issues

The Subcommittee requested our analysis of three legal issues raised by the Virgin Islands auditor regarding customs duties collected in the Islands. A detailed discussion of these issues, including the results of our analyses, follows.

Issue 1

Is the Virgin Islands entitled to the proceeds of customs duties collected through preclearance operations on goods entering the mainland from the Virgin Islands?

GAO Opinion

No. The United States is the rightful recipient of preclearance duty collections. The duties are collected under the Tariff Schedules of the United States; therefore, they are required to be deposited in the general fund of the U.S. Treasury.

All articles bought by travelers in the Virgin Islands are subject to U.S. customs duties when the travelers reenter the United States. In certain locations around the world, such as Canada and the Bahamas, Customs permits travelers to pay their duties before leaving the foreign port. These payments are known as preclearance collections. Since November 1966, preclearance services have also been provided in the Virgin Islands. Customs deposits preclearance collections from the Islands and all other locations into the general fund of the U.S. Treasury. The Virgin Islands government, however, claims that the duties from preclearance operations in the Islands should be deposited into the Virgin Islands treasury.

The Virgin Islands' claim is based on its interpretation of the memorandum of understanding (MOU) entered into with Customs in 1966. The agreement states, in part, that

“This preclearance operation is being established on a trial basis at the request of the Governor of the Virgin Islands of the United States. It will become one of the functions of the office of the District Director of Customs, Virgin Islands, and as such, is to be financed in the same manner as other Customs activities in the Virgin Islands.”

The remainder of the 4-page document establishes procedures for the preclearance of passengers' baggage at St. Croix, Virgin Islands, and details the purpose, duties, staffing, and procedures to be followed for the trial preclearance operations in the Islands.

The Virgin Islands auditor contends that the preclearance collections should be turned over to the Virgin Islands treasury after deduction of the costs of collection. He argues that the MOU's provision for financing in "the same manner as other Customs activities" means that the duties on imports to the mainland should be treated in the same way as duties on imports to the Islands—that is, the Virgin Islands pays the collection costs, and the remaining duties are turned over to the Virgin Islands treasury.¹

The Virgin Islands auditor cites as support for his position an August 19, 1987, letter from Ralph M. Paiewonsky, who entered into the 1966 agreement when he was Governor of the Islands. Mr. Paiewonsky said:

"I am confident that Commissioner Johnson and other Customs officials understood and agreed that the cost of administering the pre-clearance function would be handled in the same way as the Customs costs had always been handled, i.e., total expenses would be deducted from total revenues realized and the remaining balance turned over to the Government of the Virgin Islands."

The Chief Counsel, Customs Service, Department of the Treasury, issued an opinion dated November 24, 1987, concerning the controversy about the MOU. The Chief Counsel concluded that the Virgin Islands is not entitled to the proceeds of preclearance collections. He noted that the MOU does not provide for the disposition of proceeds into the treasury of the Virgin Islands and that during the 21 years of preclearance operations

¹Duties on goods imported from or through the Virgin Islands to the United States have been the subject of earlier controversies. The first concerned an interpretation of the 1917 act that established a basic charter of civil government for the people of the Virgin Islands. That statute provided for (1) the imposition of Customs duties on Virgin Islands goods entering the mainland, (2) the imposition of Customs duties on goods entering the Virgin Islands, and (3) the "cover" (deposit) to the Virgin Islands treasury of the "duties and taxes collected in pursuance of this Act." (Act of Mar. 3, 1917, ch. 171, sec. 5, 39 Stat. 1132, 1133 (1917)). In an opinion issued about 6 weeks after the legislation was enacted, the Comptroller of the Treasury ruled that only those duties specifically authorized for the first time by the 1917 act—duties on goods entering the Virgin Islands—were collected "in pursuance of this Act." Because mainland duties were collected under separately enacted laws of the United States, the 1917 act did not require the deposit of these duties into the Virgin Islands treasury. (23 Dec. Comp. 574, 576.)

In 1980, the Virgin Islands brought suit against the United States contending that, under the applicable provisions of the 1954 Revised Organic Act, the proceeds of Customs duties levied in the United States on goods shipped from the Virgin Islands must be "covered" to the Virgin Islands treasury. (Revised Organic Act of the Virgin Islands, P.L. No. 517, ch. 558 sec. 28(a), 68 Stat. 497, 508 (1954), codified at 19 U.S.C. sec. 1642.) (The relevant portions of the 1917 act were subsumed in this act.) The Court of Appeals ruled against the Virgin Islands, holding that a provision in the 1954 act requiring that "the proceeds of customs duties . . . be covered into the treasury of the Virgin Islands" applied to only local duties. (*Virgin Islands v. Blumenthal*, 642 F.2d 641 (1980).)

following execution of the MOU, the preclearance collections have routinely been deposited into the general fund of the U.S. Treasury. He further explained that had the agreement required preclearance collections to be turned over to the government of the Virgin Islands rather than to the general fund of the Treasury, it would have been "ultra vires"² on the part of any government signatory and, thus, invalid. The Chief Counsel noted that the collection of preclearance duties in the Virgin Islands are collections under the Tariff Schedules of the United States and, like collections at all other preclearance locations around the world, are required to be deposited in the general fund of the U.S. Treasury.

We agree with the Chief Counsel's conclusions. Neither the MOU provision dealing with financing nor any other provision in the MOU specifies that preclearance collections are to be deposited in the Virgin Islands treasury rather than in the general fund of the U.S. Treasury. Moreover, as the Chief Counsel of Customs noted, any attempt to redirect the deposits to the Virgin Islands treasury by use of an MOU would exceed the powers of the federal official who signed the MOU and, therefore, would not bind the government. Under the tariff laws, duties on all articles imported into the customs territory of the United States must be paid into the U.S. Treasury. Thus, the only way that the Virgin Islands could retain the duties collected would be if Congress were to amend the tariff laws.

Issue 2

Is the Virgin Islands entitled to interest on funds collected by Customs from the time collections are placed in an account maintained by the U.S. Treasury to the time they are transferred to the Virgin Islands?

GAO Opinion

No. The Virgin Islands is not entitled to interest on Virgin Islands funds.

Goods imported into the Virgin Islands are subject to a Virgin Islands duty. Customs is required to assist the Islands in collecting these duties. The Virgin Islands contends that it should be receiving interest on the customs fees and duties from the time they are collected and deposited in the U.S. Treasury to the time they are distributed to the Islands. The Virgin Islands Governor maintains that because the funds are used to purchase securities and the U.S. government has benefited financially from their use, the Virgin Islands should receive interest on them.

²An act which is in excess of power granted.

The Virgin Islands' government has sent a number of letters to Treasury claiming interest on these funds. Treasury, in a series of reply letters, determined that interest was not payable. In a December 3, 1987, letter Treasury informed the Virgin Islands that under the well-defined rule set forth in United States v. Louisiana, 446 U.S. 253 (1979), the United States cannot pay interest unless it is expressly authorized to make such a payment by statute or contract. Regarding the Virgin Islands funds, Treasury said that no written or oral agreement existed on how the funds were to be held or on whether the funds were to accrue interest. Thus, Treasury concluded that the government had no legal authority to pay the claim for interest, regardless of whether the United States benefited from the use of the funds.

Subsequently, the Virgin Islands and its auditor claimed that statutory authority for payment of interest on the fund can be found in 31 U.S.C. sec. 9702, which imposes certain requirements on the investment of trust funds and sets a minimum annual interest rate for those funds of 5 percent. They have contended that the fund is a trust fund because (1) it has been referred to as such in miscellaneous government documents and (2) it is similar in nature to a number of funds classified as trust funds under 31 U.S.C. sec. 1321.

Treasury concluded that the fund is not a trust fund because it has not been established as such by statute or agreement. Also, Treasury concluded, and we agree, that 31 U.S.C. sec. 9702 does not provide an independent basis for paying interest. In a pivotal case relied upon by Treasury, United States v. Mescalero Apache Tribe, 518 F.2d 1309 (Ct. Cl. 1975), the Court of Claims held that the provisions codified in section 9702 merely specify the means for investing trust funds created by a separate statute, contract, or treaty that specifically requires the payment of interest on the particular fund. Thus, according to the court, the statute itself does not require the government to pay interest on any fund that "was not expressly required to be productive by a contract, treaty, or statute." (Mescalero at 1330-1331. See also Bonnar v. United States, 438 F.2d 540 (Ct. Cl. 1971).)

Accordingly, in the absence of a statute or contract that specifically authorizes payment of interest on the Virgin Islands' fund, no legal basis exists for paying interest.

Issue 3

Is the Virgin Islands entitled to duties collected at U.S. ports on goods bound for the Virgin Islands?

GAO Opinion

No. The Virgin Islands is not entitled to any portion of U.S. customs duties collected in the United States.

The United States collects duties on the goods when they enter the United States and deposits them in the general fund of the Treasury. The Virgin Islands, however, claims that duties collected at U.S. ports on goods ultimately shipped to the Virgin Islands should be credited to the Islands.

Until 1982, goods that were shipped through the United States had duties assessed on them twice—first by the United States and then by the Virgin Islands. The Virgin Islands legislature passed a law in that year to exempt various imported goods from Virgin Islands' excise taxes and custom duties.³ The law also decreased the excise taxes or customs duties on all goods that go through the United States and are assessed duties before entering the Islands. If the United States collects at least a 6-percent duty on these goods, the Virgin Islands exempts the goods from being assessed a duty when they reach the Islands. If less than 6 percent is collected in the United States, then the Virgin Islands requires that the goods be assessed a percentage that would make the total duty equal 6 percent.

The Virgin Islands claims that it is owed the duty and taxes collected in the United States (to the maximum of 6 percent) on the goods that go through the United States before entering the Islands. According to the Virgin Islands auditor, the intent of the 1982 legislation was to eliminate the double payment of duties on goods entering the Islands through the United States and not to eliminate the Islands' receipt of its duties. The auditor said that because the U.S. government is to assist the Virgin Islands in collecting duties on foreign imports, the Islands should be receiving the duties. In April 1988, the Commissioner of Customs told

³Act No. 4740, Sess. L. 1982, September 20, 1982, codified at 33 V.I. Code Ann., sec. 42 and 525 (1987). As stated in sec. 6(a) of the law, its purpose was as follows:

"The Virgin Islands Government has removed the excise tax and the customs duties on specifically identified items in order to stimulate the major industry of the Virgin Islands, the tourist industry. These reductions in taxes, coming at this time, can only be justified on the basis that the maintenance and growth of our principal industry is so vital to our economy that these measures must be taken in an effort to shore up this aspect of our economy and that such encouragement will return to our industrial and economic complex increased tax revenues as well as increased employment."

the Governor of the Virgin Islands that its Chief Counsel had determined that the duties must be deposited into the U.S. Treasury and that there is no legal authority to transfer them to the Islands.

Like all money collected on behalf of the United States, duties collected in the United States on goods ultimately shipped to the Virgin Islands must be paid into the Treasury. As provided in 31 U.S.C. sec. 3302(b), "[a]n official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." Accordingly, Customs must deposit the duties into the Treasury and no legal authority exists to transfer them to the Virgin Islands.

Customs also concluded, and we agree, that in these instances the Virgin Islands is not eligible to receive a "drawback," or refund, of duties under the drawback provisions of Customs law. The drawback provisions, set forth in 19 U.S.C. sec. 1313, allow for situations under which duties paid on goods imported into the United States and later exported may be refunded. For purposes of the shipments at issue here, no drawback is allowable because shipments to the Virgin Islands, an insular possession of the United States, would not be considered exportations for drawback purposes. (See Mitsubishi International Corp. v. U.S., 55 Cust. Ct. 319, C.D. 2597 (1965).)

Contested Fund Balance

The Virgin Islands auditor claims that the Customs Service owes the Islands about \$5 million in duty collections. The basis for the claim is a difference between the auditor's calculation of the year-end balance for the Virgin Islands account for fiscal year 1980 and the year-end balance reported by the U.S. Treasury. We were unable to determine which balance, if either, was an accurate reflection of the account because the supporting documents were no longer available.

How Treasury Maintains Agency Accounting Records

Treasury is responsible for maintaining the central accounting system of the federal government. In this capacity, Treasury makes disbursements and records deposits for most executive branch departments and agencies. The account balances that it maintains are based on information from individual agencies. When Treasury makes disbursements, it does not charge the specific account from which the funds are paid but charges a numeric symbol (called an agency location code) that identifies the agency office that authorized the disbursement. Similarly, when an agency makes a deposit, Treasury credits an agency location code. Agencies maintain subsidiary accounts to support the transaction data they furnish to Treasury.

According to Treasury officials, part of the information that agencies are required to report to Treasury monthly, with some exceptions, is the net changes to their subsidiary accounts. On the basis of this information, Treasury then adjusts the subsidiary account balances. For example, if during a 1-month period, Customs collected and deposited \$1 million for the Virgin Islands and disbursed \$750,000, it would report to Treasury a net increase of \$250,000 in the Virgin Islands subsidiary account. The net activity associated with each agency location code should equal the sum of the transactions of all of its subsidiary accounts. The year-end balances that the agencies report to Treasury are certified by the agencies.

The Virgin Islands Auditor's Methodology

The Virgin Islands auditor concluded that in fiscal year 1980, when Customs changed the Virgin Islands account from a special fund to a deposit fund,¹ Customs credited the Virgin Islands deposit fund with about \$5 million less than it should have. As part of his review, the auditor calculated what the Virgin Islands year-end account balance for fiscal years

¹Federal government accounts are assigned to fund groups. Two of these groups are for special funds and deposit funds. According to a Customs official, Treasury General Counsel had determined that the Virgin Islands collections should be placed in a deposit fund rather than a special fund, and the Office of Management and Budget concurred.

1978 through 1980 should have been on the basis of a variety of collection and disbursement records.

To do the reconstruction, the auditor began with the fiscal year 1977 year-end Virgin Islands balance from the annual Treasury report on receipts, expenditures, and balances. As explained above, the federal agencies administering the accounts certified the year-end account balances. To that balance the auditor added the monthly duty collection figures for the year and subtracted Customs' payments and administrative costs to the Virgin Islands for the collections. The balance was the auditor's calculation of what should have been in Customs' Virgin Islands account at the end of the year.

The auditor continued this calculation through fiscal year 1980. He then compared his calculation of the balance for the end of fiscal year 1980 with the deposit fund and the special fund account balances as reported in the annual Treasury report. Based on his calculations, the sum of the two accounts was about \$5 million less than it should have been. Hence, he asserts that the Virgin Islands is owed about \$5 million.

Customs' Explanation of the Difference

Customs said that the Virgin Islands has received credit for all the collections. According to Customs, the difference in the account balances calculated by the auditor and reported by Treasury may be due to the auditor having access to incomplete data and including inappropriate data. However, Customs is not able to support its position because of insufficient records and personnel changes.

Customs officials said that one possible reason for the discrepancy is that the auditor did not account for all transactions in the fiscal year in which they occurred. For instance, the auditor may have included in his fiscal year 1978 calculations disbursements to the Virgin Islands for collections made in fiscal year 1977 even though the checks for these disbursements were not deposited until fiscal year 1978. Additionally, Customs officials said that the auditor may have included preclearance collections in his collection figures. These collections are credited to the United States and not to the Virgin Islands. (See app. I).

Records Are Not Available to Reconstruct the Account

We attempted to get the detailed accounting transactions from Customs for fiscal years 1978 to 1980 to validate either (1) the Virgin Islands auditor's analysis or (2) Customs' assertion that the auditor did not have sufficient data for his reconstruction of the account or that he included inappropriate data. However, many of the transaction data are no longer available.

Because of the difficulty in getting the detailed data for all 3 years, we asked Customs to get us the data for fiscal year 1979. We chose that year because it appeared to be the year in which the majority of the discrepancy occurred. The year-end account balances, as reported by Treasury and as calculated by the Virgin Islands auditor, differed by about \$4 million for that fiscal year. By the end of fiscal year 1980 the difference was about \$5 million. Therefore, it does not appear that the explanation for the imbalance is the change during fiscal year 1980 in the Virgin Islands account from a special fund to a deposit fund.

Not all of the collection and disbursement data needed for the verification were available. The collection data were stored on magnetic tape. According to a Customs official, he was able to retrieve data from only about half of the tapes for fiscal year 1979 because the tapes were either missing or were not readable. Additionally, Customs does not have detailed disbursement data from before January 1981.

We attempted to compare the collection figures that Customs was able to retrieve with the figures used by the Virgin Islands auditor. We could not match the numbers. Because of a lack of documentation of the program Customs used in 1979 for collections, the analyst who retrieved the figures was unable to tell us exactly what the collection figures represented. For instance, he could not determine whether the data were a summary of collections for 1 day or for a number of days.

These restrictions prevented us from validating the Virgin Islands auditor's collection and disbursement figures. Therefore, we were unable to determine which account balance was more accurate—the balance calculated by the auditor or the balance reported by Treasury.

Other Issues

The Subcommittee also requested that we provide information on

- which of Customs' expenses for servicing the Virgin Islands can be paid from the Customs user fee account and the amount that has been paid,
- Customs' documentation of its methodology for estimating and allocating the administrative costs of supporting the Virgin Islands operation, and
- the recovery of erroneous salary payments made to former Customs employees at the Virgin Islands.

Costs Charged to the Customs User Fee Account

The Consolidated Omnibus Budget Reconciliation Act of 1985 established Customs' user fees. The legislation allows Customs to collect fees for various services, such as processing merchandise for entry into the United States. The fees are to be deposited into Customs' user fee account. The account is charged for certain costs. Customs officials said that the Virgin Islands was eligible to participate in distribution from the user fee account retroactive to November 7, 1986.

In October 1987, the Virgin Islands Governor wrote the Commissioner of Customs that the user fee legislation appears to allow the base salary costs of preclearance inspection personnel to be paid from the user fee account. The Deputy Commissioner of Customs informed the Governor in May 1989 that Customs was not authorized to charge the user fee account for the regular salary and benefit costs of employees involved in preclearance activities. Customs said that the only costs authorized to be charged are those incurred for inspectional overtime services and other costs—such as those for travel, relocation, rent, supplies, and equipment—that result from clearance operations outside the United States. The Deputy Commissioner said that overtime expenses in the Virgin Islands totaling about \$830,000 had been charged to the user fee account. These charges covered the period from August 1987 through March 1989.

According to the Deputy Commissioner, Customs is not charging the user fee account for costs of preclearance, other than overtime costs that are incurred at the Virgin Islands, because it cannot readily identify the portion of overall support costs that is attributable to preclearance. According to a Customs official, the Virgin Islands preclearance operation is the only one that takes place at a location where both preclearance and regular collection activities occur. At the Virgin Islands, the Customs employees who do the preclearance operation duties also have regular collection duties. Customs does not have the

employees keep records of what costs are incurred for preclearance activities and regular collection activities. Because of the commingling of collection activities, Customs says it cannot determine what portion of costs is the result of preclearance activities.

The Deputy Commissioner also said that before the user fee legislation, the airlines were billed for the overtime costs. Therefore, the legislation did not reduce the Virgin Islands' inspectional costs. However, when Customs' National Finance Center refunded air carriers about \$93,000 for payments made from November 7, 1986, to August 16, 1987, it made the refunds from the Virgin Islands account rather than from the user fee account. According to the Acting Director, National Finance Center, the Center has corrected the error. Customs refunded the money to the Virgin Islands in October 1989.

Administrative Support Costs

The cost of various Customs services, such as data center processing of transactions, personnel administration, budgeting, accounting, and logistical support are to be paid to Customs to the extent that they support the duty collection activities for the Islands. The Virgin Islands auditor claims that Customs has charged the Islands for support costs in excess of those costs incurred.

In April 1988, the Commissioner of Customs agreed to revise the procedures for estimating and allocating the costs of supporting the Virgin Islands operation. He also agreed to provide the Virgin Islands with documentation supporting the allocations. However, Customs had not provided the Islands with this information as of October 1989.

A Customs official said that as a result of the Virgin Islands auditor's review, Customs drafted a directive on the Virgin Islands deposit fund policies and procedures. The directive contained guidance for estimating and allocating support costs. According to the official, Customs distributed the directive for internal review in the spring of 1988. The official said that the directive was never finalized, apparently because no one in Customs followed up on it.

Customs has revised the directive and once again distributed it for internal review. Customs expects it to be issued in December 1989. Customs said that it will give a copy to the Virgin Islands when issued.

**Erroneous Salary
Payments**

The Virgin Islands auditor found that two Customs employees who worked at the Virgin Islands received payments for which they were not entitled. The payments were made after the employees separated from Customs. Our review of Customs records showed that the payments were returned to Customs. The total amount of these payments was about \$650.

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